

REMARKS

[01] Statutory Status

[02] Item 4 of the Office Action of 2009-Apr-15 rejects Claims 2-7, 11-12, and 14-15 for being directed to non-statutory subject matter. These claims have been amended so that the claimed method is tied to a particular apparatus, in this case, a digital camera. Accordingly, Claims 2-7, 11-12, and 14-15 should be in condition for allowance.

[03] Obviousness of “While”

[04] Item 6 of the Office Action rejects Claims 8-10 and 25-27 as being unpatentable (obvious) over U.S. Patent No. 6,717,808 B1 to Mancuso et al., “Mancuso” herein. This rejection is traversed.

[05] The Office Action accurately characterizes the differences between the invention and the state of the art as required by *Graham v. Deere*. However, the Office Action fails to establish the state of the art at the time the invention was made. Accordingly, the Office Action has failed to meet the requirement of a *Graham v. Deere* analysis and thus has failed to make a *prima facie* case of obviousness. For this reason, the rejections for obviousness should be withdrawn.

[06] The Office Action argues that the term “while” lacks patentable weight. However, this position is belied by the admission in the Office Action that Mancuso does not meet the “while” limitation. In view of hindsight provided by the present application, it is clear that performing the combining while capturing a panoramic image is different and better than what had been done in the prior art. Clearly, the argument that the “while” limitation can somehow be ignored is without legal merit.

[07] The Office Action argues that the concept of performing A while performing B is well-known in the art and gives examples such as parallel processing and/or multi-tasking. However, the general proposition that some things can be performed concurrently does not establish that all things can be performed concurrently. This is especially true where one operation is logically dependent on another as, in this case, stitching frames together cannot occur until frames are captured. If the Examiner intends to maintain this ground of rejection, Applicants respectfully suggest that the Examiner provide a reference in support of his position so that its applicability to the present arguments can be evaluated. In the absence of an effective combining reference, it is respectfully suggested that the rejections for obviousness be withdrawn.